

<u>CERTIFIED MAIL</u> RETURN RECEIPT REQUESTED

AUG 1 B 2006

Kevin E. Anderson, Esq. Parry, Anderson & Gardiner 60 East South Temple Salt Lake City, Utah 84111

RE: MUR 5598

Utah Republican Party –
Pederal Account and
Mike McCauley, in his
official capacity as treasurer

Dear Mr. Anderson:

The Federal Election Commission ("the Commission") previously notified your clients, the Utah Republican Party - Federal Account ("the Committee") and Mike McCauley, in his official capacity as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients.

Upon further review of the allegations contained in the complaint, and information supplied by your clients, the Commission, on July 27, 2006, found that there is reason to believe the Committee and Mike McCauley, in his official capacity as treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A), 434(b), and 441d. The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information.

Your clients may submit any factual or legal materials that they believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Subpoena to Produce Documents and Order to Answer Questions must be submitted to the General Counsel's Office within 30 days of your receipt of this letter. Any additional materials or statements you wish to submit should accompany the response to the Subpoena and Order. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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If your clients are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondents.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that your clients wish the matter to be made public.

If you have any questions, please contact Thomas J. Andersen, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Michael E. Toner

ETC

Chairman

Enclosure

Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Utah Republican Party (Federal Account) MUR 5598
and Mike McCauley, in his official capacity
as treasurer

I. BACKGROUND

before the 2004 general election.

This matter was generated based on a complaint filed with the Federal Election

Commission ("the Commission") by Donald Dunn, Utah Democratic Party Chair. See 2 U.S.C.

437g(a)(1). The case is about fourteen brochures criticizing Jim Matheson, incumbent

Congressman from Utah's Second Congressional District, or supporting John Swallow

(Matheson's opponent), that were distributed in that district by mail and by canvass shortly

The complaint, to which only two of the brochures were attached, alleges that they were excessive in-kind contributions from the Utah Republican Party ("the URP") and the National Republican Congressional Committee ("NRCC") to John Swallow and his campaign committee, John Swallow for Congress, Inc. ("the Swallow Committee"). It bases this allegation on the fact that the brochures were produced by Arena Communications ("Arena"), a common vendor to the URP, the NRCC, and the Swallow Committee. The complaint also alleges that the brochures did not contain adequate disclaimers. The URP acknowledges responsibility for the brochures, but claims they cannot be excessive contributions because they qualified for the "volunteer materials exemption" of 2 U.S.C. §§ 431(8)(B)(ix) and (9)(B)(viii). See also 11 C.F.R. §§ 100.87, 100.147. However, based on the available information, it appears that either someone other than the URP may have paid for one of the brochures or that one of Arena's invoices to the URP may

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- i not have been paid at all. Thus, it is unclear whether the URP in fact paid for all of the brochures
- 2 at issue. Moreover, it is not clear that the degree of volunteer involvement in the distribution of
- 3 the brochures was sufficient to qualify the brochures as "volunteer materials." If the brochures
- 4 did not qualify as "volunteer materials," then ecordination of them between the URP and the
- 5 Swallow campaign could have resulted in excessive contributions from the URP to John
- 6 Swallow and the Swallow Committee.
- Based on the facts presented in the complaint, the response, as well as other available
- 8 information, there is reason to believe that the Utah Republican Party (Federal Account) and
- 9 Mike McCauley, in his official capacity as treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A) by
- making excessive contributions to John Swallow and the Swallow Committee, 434(b) by failing
- to report all of its contributions or coordinated party expenditures, and possibly a debt owed to
- 12 Arena, in connection with the brochures, and 441d by failing to include the appropriate
- 13 disclaimer on the brochures.

14 II. <u>FACTUAL & LEGAL ANALYSIS</u>

A. The "Volunteer Materials" Exemption

- The purpose of the volunteer materials exemption is "to encourage volunteers to work for
- and with local and State political party organizations." H.R. Rep. No. 422, 96th Cong., 1st Sess. 9
- 18 (1979), reprinted in FEC Legislative History of Federal Election Campaign Act Amendments of
- 19 1979 at 193 (GPO 1983). Thus, for the exemption to apply, the materials must be "distributed by
- 20 volunteers and not by commercial or for-profit organizations." 11 C.F.R. §§ 100.87(d),
- 21 100.147(d).

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